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IN THE
COURT OF APPEALS OF INDIANA

JAMES R. KINNEY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 48A05-0612-CV-00756
	)	
BRENDA K. KINNEY,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MADISON COUNTY CIRCUIT COURT
The Honorable Thomas L. Clem, Special Judge
Cause No. 48C01-9008-DR-316

August 22, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent James R. Kinney appeals from the trial court's order granting appellee-petitioner Brenda K. Kinney's petition for educational support of the couple's child, Latora M. Kinney. In particular, James argues that the trial court erroneously ordered him to pay $8,000 towards Latora's educational expenses and failed to abate his preexisting child support obligation. Concluding that the trial court must enter findings regarding its deviation from the Child Support Guidelines in the apportionment of the expenses between James and Brenda and its decision to decline to abate James's preexisting child support obligation, we affirm in part and remand with instructions to enter findings on those issues.

FACTS

James and Brenda were married until Brenda filed a petition to dissolve the marriage and the divorce became final in April 1991. Latora was born of the couple's relationship on December 5, 1987. She graduated from high school in June 2006, and in August 2006 she began attending the Scottsdale Culinary Institute (the Institute) in Arizona. Upon completing the eighteen-month program at the Institute, Latora will receive an Associate's Degree. The total cost for the program is $30,695, and Latora's monthly rent is $680.

James's weekly child support obligation is $35, which is directly deposited into Latora's checking account. Latora also receives $400 per month in back child support,[1] which is applied towards her monthly rent payments, and an additional $400 per month from Brenda, to be used for living expenses. Latora and Brenda obtained grants and loans totaling $22,025—Latora obtained a Pell Grant in the amount of $2,400 and a Federal Subsidized

[1] As of March 1, 2005, James was in arrears on his child support payments in the amount of $12,399.

Stafford Loan in the amount of $2,625, while Brenda obtained a Federal Parent Loan in the amount of $17,000.

In 2005, Brenda earned $39,714 and James earned $26,114.16. Additionally, while attending the Institute, Latora works approximately 25 hours per week as a waitress in Scottsdale, using the earnings for her living expenses.

The last time James saw Latora was Christmas 2001. Brenda testified that it was James's choice to cut off contact with his daughter, whereas James testified that Latora stopped taking his phone calls and making herself available for parenting time.

On April 4, 2006, Brenda filed a petition for educational support, asking the trial court to order James to contribute to the cost of Latora's post-secondary education at the Institute. On November 28, 2006, the trial court summarily granted Brenda's petition without an order or oral comments to the parties, directing James to pay $8,000 towards Latora's post-secondary education. It did not abate his preexisting child support obligation of $35 per week. James now appeals.

DISCUSSION AND DECISION

I. Standard of Review

In determining whether the trial court abused its discretion in modifying a child support order, we neither reweigh the evidence nor judge the credibility of witnesses. Instead, we consider only the evidence most favorable to the judgment and all reasonable inferences that may be drawn therefrom. Bower v. Bower, 697 N.E.2d 110, 113 (Ind. Ct. App. 1998). We will affirm the trial court's decision if there is substantial evidence

supporting it even though we might have reached a different conclusion. Ullery v. Ullery, 605 N.E.2d 214, 215 (Ind. Ct. App. 1992). We will reverse only for an abuse of discretion, which occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Burke v. Burke, 809 N.E.2d 896, 898 (Ind. Ct. App. 2004).

II. Post-Secondary Educational Expenses

Indiana Code section 31-16-8-1(b) describes the circumstances under which a child support order may be modified, and relevant herein is the requirement that there be "a showing of changed circumstances so substantial and continuing as to make the terms unreasonable . . . ." I.C. § 31-16-8-1(b)(1). The statute does not require that the trial court make specific findings of fact and conclusions of law.

Indiana Code section 31-16-6-2 contains the parameters of an educational expenses support order:

> (a) The child support order or an educational support order may also include, where appropriate:
>
> (1) amounts for the child's education in elementary and secondary schools and at postsecondary educational institutions, taking into account:
>
> (A) the child's aptitude and ability;
>
> (B) the child's reasonable ability to contribute to educational expenses through:
>
> (i) work;
>
> (ii) obtaining loans; and
>
> (iii) obtaining other sources of financial aid reasonably available to the child and each parent; and
>
> (C) the ability of each parent to meet these expenses;
>
> (2) special medical, hospital, or dental expenses necessary to serve the best interests of the child; and
>
> (3) fees mandated under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669).

> (b) If the court orders support for a child's educational expenses at a postsecondary educational institution under subsection (a), the court shall reduce other child support for that child that:
> (1) is duplicated by the educational support order; and
> (2) would otherwise be paid to the custodial parent.

This statute, similarly, does not require the trial court to make specific findings of fact and conclusions of law in rendering its judgment.

James first argues that the trial court erroneously granted Brenda's petition without entering an order containing findings of fact and conclusions of law. Neither the relevant statutes nor the Indiana Child Support Guidelines contain such a requirement. Furthermore, neither party requested the trial court to enter findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A). The trial court had before it evidence concerning the parties' incomes, the cost of the Institute, financial aid, Latora's employment and living expenses, and the relationship between Latora and James. James has not established that the trial court overlooked or did not properly consider the relevant evidence. Under these circumstances, we cannot say that the trial court erred by failing to enter specific findings of fact and conclusions of law.

James next argues that the trial court erroneously divided the expenses equally between the parties even though Brenda's child support worksheet, which was completed according to the Child Support Guidelines, instructed that there be a 60/40 split, with James responsible only for 40% of the educational expenses. Brenda requested—as she was entitled to do—that the trial court deviate from the child support worksheet and instead divide the educational expenses equally.

It is well established that the Child Support Guidelines "are not immutable, black letter law." Ind. Child Support Guideline 1 commentary. If, however, the trial court "believes that in a particular case application of the Guideline amount would be unreasonable, unjust, or inappropriate, a finding must be made that sets forth the reason for deviating from the Guideline amount." Id. (emphasis added). Here, therefore, the trial court was certainly entitled to deviate from the 60/40 split suggested by the Guidelines, but it was required to enter a finding explaining its reasons for doing so. Consequently, we are compelled to remand this cause with instructions to apportion the expenses according to the Guidelines or to enter findings explaining the reasons for the deviation therefrom.

Finally, James contends that Latora has repudiated her relationship with him such that an award of post-secondary educational expenses is not warranted. We have held that "[t]he expectation that a parent would ordinarily be inclined to contribute toward his child's college education (which may be enforced under our laws of dissolution) does not continue, and should not be enforced where an adult child has repudiated his relationship with his parent." McKay v. McKay, 644 N.E.2d 164, 168 (Ind. Ct. App. 1994).

Here, Brenda testified that Latora had attempted to call James on the telephone but that he hung up on her. She also testified that it was James's decision to cut off visitation with Latora. The last time Latora and her father saw each other was Christmas 2001, and that visit had been arranged by Brenda and Latora. Latora has not received any correspondence from James. Tr. p. 16-20. This evidence and the reasonable inferences that may be drawn therefrom support a conclusion that Latora did not repudiate her relationship with James.

James's attempt to refocus our attention on other evidence in the record is merely an invitation to reweigh the evidence and judge witness credibility—a practice in which we do not engage when considering the trial court's modification of a child support order. Consequently, we do not find that the trial court abused its discretion by implicitly concluding that Latora did not repudiate her relationship with James.

III. Abatement

Finally, James argues that the trial court erroneously failed to abate his preexisting weekly child support obligation of $35 when it ordered him to contribute to Latora's post-secondary educational expenses. The relevant statute provides that if a trial court orders support for a child's educational expenses, the court "shall reduce other child support for that child that (1) is duplicated by the educational support order; and (2) would otherwise be paid to the custodial parent." I.C. § 31-16-6-2(b); see also Hay v. Hay, 730 N.E.2d 787, 795 (Ind. Ct. App. 2000) (holding that the trial court "must consider full or partial abatement of a parent's basic child support obligation where the parent is also obligated to pay a portion of the child's college expenses in addition to child support"). Inasmuch as the trial court herein made no findings or explanations of its calculation of James's obligation, we cannot be certain that the requisite statutory factors were taken into account when the trial court declined to abate the preexisting weekly obligation of $35. Consequently, we remand with instructions to abate James's weekly obligation of $35 or enter findings explaining why the factors set forth in Indiana Code 31-16-6-2(b) do not require abatement.

The judgment of the trial court is affirmed in part and remanded with instructions to (1) apportion the educational expenses between James and Brenda according to the Guidelines or to enter findings explaining the reasons for the deviation from that result, and (2) abate James's weekly obligation of $35 or enter findings explaining why the factors set forth in Indiana Code 31-16-6-2(b) do not require abatement.

BAILEY, J., and VAIDIK, J., concur.